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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,494	07/22/2002	Wataru Nakazawa		4851
22428 7590 01/26/2007 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER CLEMENT, MICHELLE RENEE	
			ART UNIT	PAPER NUMBER
			3641	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/26/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/064,494		NAKAZAWA, WATARU	
	Examiner		Art Unit	
	Michelle (Shelley) Clement		3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED, (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 5/26/06 have been fully considered but they are not persuasive. Applicant's arguments are directed to the amended claim language "wherein the spacer is configured to be separate from the threaded fastener so that the spacer and threaded fastener form separate pieces"; it is noted that it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. In response to applicant's arguments concerning the toothed washer, it is noted that applicant has not disclosed that the toothed washer is for any stated reason or has any purpose other than as a washer. Regardless, a reference has been supplied showing the equivalence of washers.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scalise (US Patent # 5,362,187) and Kalandek et al. (US Patent # 6,450,529). Scalise discloses an attaching structure comprising a spacer, the spacer having a cylindrical portion for receiving a threaded fastener, an end of the spacer can be in contact with a vehicle body and another end of the spacer is provided with a flange. Scalise discloses the attaching structure can be used for attaching a fabric sheet to a vehicle body (column 1, line 14) by inserting a threaded fastener

Art Unit: 3641

through a hole of the fabric sheet. The flange is integrally formed with the cylindrical portion, the spacer includes a spacer rear body in contact with a fixed substrate that could be a vehicle body and a spacer front body to be connected with the spacer rear body, the spacer front body includes the flange, and the spacer rear body includes an enlarged portion larger than the hole of the fabric sheet, the enlarged portion being located between the vehicle body and the fabric sheet. The figures clearly show a clearance between the spacer and the hole of the fabric sheet, which would allow the spacer to rotate within the hole of the fabric sheet. At least one of the spacer front body and the spacer rear body include a pair of hooks provided with a pawl and an embodiment wherein both of the spacer front body and the spacer rear body include a pair of hooks, wherein the hoods are provided with a pawl. The structure further comprising a resilient washer (reference 44), attached to an end of the threaded fastener and a diameter larger than the inner diameter of the hole, configured to prevent the spacer from being removed from the hole of the fabric sheet. Although Scalise does not expressly disclose the washer being toothed, Scalise does disclose the washer as resilient for locking the bolt and thereby preventing the spacer from being removed from the hole, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute one type of locking washer for another type of locking washer, since these two washers are art-recognized equivalents and are both capable of performing the claimed function of preventing the spacer from being removed from the hole (See Wang (US Patent # 6,343,904)). Scalise discloses the claimed invention except for the spacer configured to be separate from the threaded fastener so that the spacer and threaded fastener form separate pieces. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pieces separate, since it has been held that constructing a

Art Unit: 3641

formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. It is noted that limitations as to the method in which the structure is are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Although Scalise does not expressly disclose the attaching structure in combination with an airbag including a fabric sheet, the hole located in an edge portion of an airbag that is intended to protect a vehicle occupant’s head, Kalendek et al. does. Kalendek et al. teaches a head protective airbag including a fabric sheet, the sheet attached to a vehicle body by inserting a fastener through a hole of the sheet and through the vehicle body. Scalise and Kalendek et al. are analogous art because they are from similar problem solving areas: fastening fabric sheets to vehicle bodies. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the fastener as taught by Scalise with the protective bag as taught

Art Unit: 3641

by Kalendek et al. The suggestion/motivation for doing so would have been to utilize an effective fastener to fasten the airbag to the vehicle.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scalise (US Patent # 5,362,187) and Nakajima et al. (US Patent # 6,279,941). Scalise discloses an attaching structure comprising a spacer, the spacer having a cylindrical portion for receiving a threaded fastener, an end of the spacer can be in contact with a vehicle body and another end of the spacer is provided with a flange. Scalise discloses the attaching structure can be used for attaching a fabric sheet to a vehicle body (column 1, line 14) by inserting a threaded fastener through a hole of the fabric sheet. The flange is integrally formed with the cylindrical portion, the spacer includes a spacer rear body in contact with a fixed substrate that could be a vehicle body and a spacer front body to be connected with the spacer rear body, the spacer front body includes the flange, and the spacer rear body includes an enlarged portion larger than the hole of the fabric sheet, the enlarged portion being located between the vehicle body and the fabric sheet. The figures clearly show a clearance between the spacer and the hole of the fabric sheet, which would allow the spacer to rotate within the hole of the fabric sheet. It is noted that limitations as to the method in which the structure is are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

Art Unit: 3641

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Although Scalise does not expressly disclose the attaching structure in combination with an airbag including a fabric sheet, and the spacer including a tacking member that engages with an engaging hole in the vehicle body, *Nakajima et al.* does. *Nakajima et al.* teaches an air bag device having a structure for attaching the airbag sheet to the vehicle, wherein the attaching structure includes a spacer having a cylindrical portion for receiving a threaded fastener, the spacer including a tacking member for tacking the spacer to the vehicle body (column 6, lines 55-65) so that the spacer will not rotate when fastened to the vehicle. Scalise and *Nakajima et al.* are analogous art because they are from similar problem solving areas: fastening fabric sheets to vehicle bodies. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the fastener as taught by Scalise with the protective bag and tacking member as taught by *Nakajima et al.* The suggestion/motivation for doing so would have been to utilize an effective fastener that would not rotate once an airbag was fastened to the vehicle.

Art Unit: 3641

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3641

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHELLE CLEMENT
PRIMARY EXAMINER